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5 *Attorney for Plaintiffs*
6 *MGM Resorts International and*
6 *CityCenter Land, LLC*

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 MGM RESORTS INTERNATIONAL, a
10 Delaware corporation, and CITYCENTER
10 LAND, LLC, a Nevada limited liability
11 corporation,

Case No. 2:14-cv-1369

12 Plaintiffs,

13 v.

14 JOHN DOES 1-2,

15 Defendants.

COMPLAINT

16 For its complaint, Plaintiffs MGM RESORTS INTERNATIONAL and CITYCENTER
17 LAND, LLC allege the following:

18 **NATURE OF THE ACTION**

19 1. Plaintiffs bring this action to stop the unknown owners of two usernames on the
20 photo sharing network Instagram from trading on Plaintiffs' well-known marks by distributing
21 images and comments under names identical to Plaintiffs' trademarks "MGM" and "VDARA".
22 The Defendants' use of Plaintiffs' trademarks as a means to distribute images and comments has
23 already lead to confusion among Plaintiffs' customers, and if allowed to continue is likely to
24 continue to harm Plaintiffs' valuable trademarks, goodwill, and reputations.

25 2. In this action, Plaintiffs assert claims for trademark infringement and dilution
26 under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), and 1125(c) and the common law, as well as
27 claims for cyberpiracy under 15 U.S.C. § 1125(d). Plaintiffs seek temporary, preliminary, and
28 permanent injunctive relief, as well as damages, attorneys' fees, and costs.

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JURISDICTION AND VENUE

2 3. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
3 §§ 1331 and 1338(a), because Plaintiff's claims arise under the laws of the United States,
4 specifically, under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), 1125(c), and 1125(d).

5 4. While the Defendants are currently unknown to Plaintiffs, despite Plaintiffs best
6 efforts to contact them and discover their identities, this Court has personal jurisdiction over
7 Defendants because they have committed acts of trademark infringement, dilution, and
8 cyberpiracy in this state and in this district.

9 5. Venue is proper in the United States District Court for the District of Nevada
10 under 28 U.S.C. § 1391(b), (c), and/or (d).

PARTIES

12 6. Plaintiff MGM Resorts International (“MGM Resorts”) is a Delaware corporation
13 whose principal place of business is at 3600 Las Vegas Boulevard South, Las Vegas, Nevada
14 89109. MGM Resorts indirectly owns and operates several resort hotels and casinos, including
15 the world-famous MGM Grand Hotel & Casino in Las Vegas (“MGM Grand”).

16 7. Plaintiff CityCenter Land, LLC (“CityCenter”) is a Nevada limited liability
17 corporation with a principal place of business at 3950 Las Vegas Boulevard South, Las Vegas,
18 Nevada 89119. CityCenter owns the world-famous Vdara Hotel & Spa in Las Vegas (“Vdara”).
19 MGM Resorts is a co-owner of CityCenter.

20 8. Defendants are the unknown owners of the usernames “MGM” and “VDARA” on
21 the photo sharing network Instagram. Their identities are currently unknown because Instagram
22 hides contact information for its users from the public, and Plaintiffs’ multiple attempts to
23 identify and contact Defendants have failed.

The MGM Grand Hotel & Casino

25 9. MGM Resorts, through its corporate subsidiaries and affiliates, owns and operates
26 several world famous resort hotel casinos in Las Vegas, Nevada and elsewhere, including the
27 world-famous MGM Grand Hotel & Casino in Las Vegas (“MGM Grand”).

28 | //

1 10. The MGM Grand is a resort hotel and casino located on the Las Vegas Strip. It
 2 features 6,852 guestrooms, 171,500 square feet of gaming, five outdoor pools, luxury shopping,
 3 a spa and salon, Cirque du Soleil's Kà show, world-renowned restaurants, lounges, a wedding
 4 chapel, expansive convention and meeting room space, nightclubs, and other amenities.

5 11. Since 1973, MGM Resorts and its predecessor entities have continuously offered
 6 a wide variety of premium goods and services in commerce under the MGM and other MGM-
 7 prefixed marks, including, without limitation, entertainment and restaurant services.

8 12. The MGM Grand hotel is world famous, frequently being featured in movies,
 9 television shows, and news reports that are distributed in the United States and around the world.
 10 As a result, consumers across the United States and around the world associate the MGM mark
 11 with entertainment, hospitality, luxury, and quality vacation experiences.

12 13. MGM Resorts has obtained several United States trademark registrations for the
 13 MGM and MGM-prefixed marks, including, but not limited to:

Mark	U.S. Reg. No.	First Use	Reg. Date
MGM	1,060,489	December 1973	March 1, 1977
MGM	2,534,227	December 1973	January 29, 2002
MGM GRAND	2,540,402	December 1973	February 19, 2002
MGM GRAND	2,857,755	December 1973	June 29, 2004
MGM GRAND	3,943,341	December 1973	April 12, 2011

19 Collectively, the foregoing trademarks are referred to herein as the "MGM Mark." MGM
 20 Resorts' federal trademark registrations for the MGM Mark are valid and subsisting, and have
 21 not been abandoned, cancelled, or revoked.

22 14. MGM Resorts uses the MGM Mark in a wide variety of ways to advertise and
 23 promote the goods and services offered at MGM Grand, including, by using the MGM Mark on
 24 the exterior of the hotel, on the hotel's website, in print ads, television and radio ads, on
 25 billboards and other signage, in digital and social media, on brochures, and in other publications,
 26 marketing materials, and advertisements.

27 15. MGM Resorts has spent millions of dollars advertising, marketing, and promoting
 28 its goods and services under the MGM Mark since at least December 1, 1973. As a result, MGM

1 Resorts has developed substantial goodwill, fame, and recognition in the MGM Mark, and
2 consumers in the United States and around the world associate the MGM Mark exclusively with
3 MGM Resorts.

4 16. As a result of its longstanding use of the MGM trademark in commerce, MGM
5 Resorts has developed common law trademark rights in the MGM trademark for use in
6 connection with, among others, hotel, casino, restaurant, and entertainment services.

7 17. The MGM Mark has become distinctive and famous in the United States and
8 around the world since at least as early as 2010.

The Vdara Hotel & Spa

18. CityCenter owns and operates the massive, multi-use, urban complex on the Las Vegas Strip known as "CityCenter." The CityCenter project includes the Vdara Hotel & Spa, an all-suite, non-gaming, smoke-free, eco-friendly, boutique retreat (the "Vdara"). The Vdara offers a wide variety of premium goods and services to hotel patrons, including, without limitation, spa services such as personalized massages, body treatments, and skincare treatments that leave patrons feeling naturally refreshed, healthy and thoroughly serene.

16 19. Since at least December 15, 2009, CityCenter has used the VDARA trademark to
17 identify, operate, and advertise the wide variety of premium goods and services offered for sale
18 and sold by CityCenter at the Vdara.

19 20. CityCenter has obtained several United States trademark registrations for the
20 VDARA marks, including:

Mark	U.S. Reg. #	First Use	Reg. Date
VDARA	3,750,156	December 15, 2009	February 16, 2010
VDARA	3,773,657	December 15, 2009	April 6, 2010
VDARA	3,773,658	December 15, 2009	April 6, 2010
VDARA	3,769,459	December 15, 2009	March 30, 2010

25 Collectively, the foregoing trademarks are referred to herein as the “VDARA Mark.”
26 CityCenter’s federal trademark registrations for the VDARA Mark are valid and subsisting, and
27 have not been abandoned, cancelled, or revoked.

1 21. CityCenter uses the VDARA Mark in a wide variety of ways to advertise and
2 promote the goods and services offered at the Vdara, including, by using VDARA on the exterior
3 of the hotel, on the <vdara.com> website, in print ads, television and radio ads, on billboards and
4 other signage, in digital and social media, on brochures, and in other publications, marketing
5 materials, and advertisements.

6 22. CityCenter has spent millions of dollars advertising, marketing, and promoting its
7 goods and services under the VDARA Mark since at least December 15, 2009. As a result,
8 CityCenter has developed substantial goodwill, fame, and recognition in the VDARA Mark, and
9 consumers associate the VDARA Mark exclusively with CityCenter.

The Instagram Service

11 23. Instagram is a mobile app and online image- and video-sharing service where
12 users can sign up for free to share and distribute pictures and videos.

13 24. Within the Instagram service, a user is identified only by the username chosen at
14 sign-up.

15 25. Instagram images and videos shared by users are by default visible to the
16 worldwide public, either through Instagram applications on mobile phones, or via a web browser
17 at www.instagram.com.

18 26. In addition to sharing images and videos, Instagram users can leave captions and
19 comments on their own and others' content, all identified by, and connected with, their
20 username. Such comments are by default visible to the public.

21 27. On information and belief, Instagram is widely used by brand owners and other
22 entities to market their products, services, and brands. It is particularly widely used in industries
23 such as hospitality, food, and entertainment. As examples, the Instagram username BELLAGIO
24 is controlled by the Bellagio Las Vegas hotel, the username MCDONALDS is controlled by
25 McDonalds restaurants, and the username MLB is controlled by Major League Baseball.

26 28. As a result, users of Instagram and other members of the general consuming
27 public have come to expect and believe that Instagram usernames of famous and well-known
28 trademarks, particularly in the hospitality, food, and entertainment markets, represent and are

1 controlled by their famous brand owners.

2 29. In addition to leaving comments, Instagram users can link their images to other
3 users by “tagging” other users in their content. Tagging creates a link between the image and the
4 tagged account.

5 30. Because the Instagram service revolves around sharing, Instagram users often
6 attempt to get their content viewed by as many users as possible. Images and videos that have a
7 large number of comments, or which a large number of users have indicated they “like,” are seen
8 as positives and goals by users. As a result, usernames that will attract viewers are highly valued
9 within the Instagram service.

10 31. An Instagram account with many views is a commercial asset, and a number of
11 such accounts have used their popularity for the account owners' commercial benefit.

Defendants' Infringing Conduct

13 32. Against this background, unknown Defendants Doe 1 and Doe 2 registered for the
14 Instagram usernames MGM and VDARA (the “Infringing Usernames”). The Infringing
15 Usernames are identical to Plaintiffs’ registered and well-known MGM and VDARA trademarks.

16 33. Plaintiffs have been unable to determine exactly when Defendants registered the
17 Infringing Usernames, but on information and belief the dates were on or after October 2010, the
18 month in which Instagram was first released.

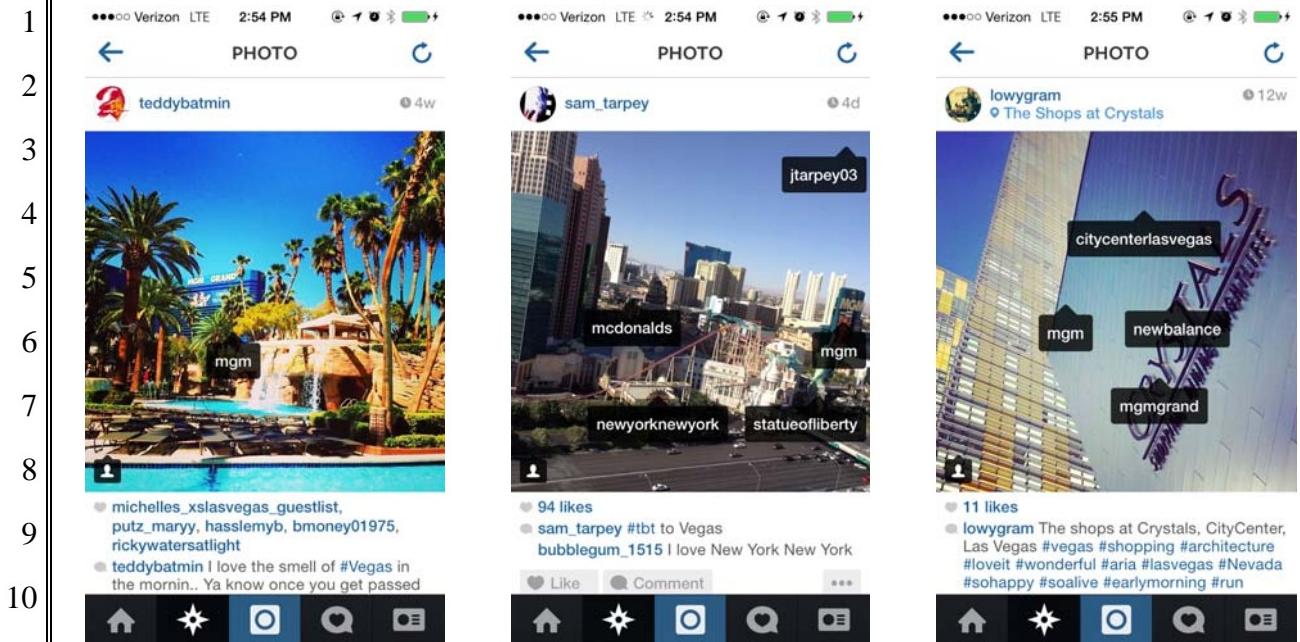
19 34. On information and belief Defendants have used the Infringing Usernames to
20 distribute images and comments under the Infringing Usernames, causing confusion amongst
21 Instagram users and the general public.

22 35. A number of Instagram users have tagged the username MGM in their images that
23 contain the MGM Grand, showing their mistaken belief that the MGM account is controlled by,
24 and/or connected with, MGM Resorts. Just a few examples of screenshots showing images
25 where users have tagged mistakenly the username MGM in their images are shown below:

26 | //

27 | //

28 | //



36. The VDARA user account has been set to private, so Plaintiffs are unable to see tags to that username. Upon information and belief, it is likely that a number of users have tagged the VDARA account in their pictures as well, under the mistaken belief that the VDARA account is controlled by CityCenter.

37. On information and belief, such visible confusion from Instagram users is only the tip of the iceberg when it comes to the confusion created by Defendants' control of the Infringing Usernames. Such confusion continues to this day, and is likely to continue as long as Defendants control the Infringing Usernames.

38. Plaintiffs have not consented to, or approved of, Defendants' use of the MGM and/or VDARA marks within their usernames, or to Defendants' distribution of images and comments in association with the MGM and VDARA marks.

39. On information and belief, Defendants' use of Plaintiffs' well-known trademarks as their usernames has likely led to Defendants receiving many additional views of their images and profiles, to Defendants' benefit.

40. Accordingly, the Defendants' actions have caused and are likely to continue to cause Plaintiffs to suffer irreparable harm and injury unless temporarily, preliminarily, and permanently enjoined by the Court.

1 41. Plaintiffs have attempted many times to contact Defendants in order to demand
2 that Defendants turn over their control over the Infringing Usernames. However, Defendants
3 have rebuffed each attempt to contact them through Instagram, and the Instagram network has
4 refused to release their contract details.

5 42. Plaintiffs therefore, in an effort to eliminate the already-existing confusion
6 stemming from Defendants' use of Plaintiffs' well-known trademarks within the Infringing
7 Usernames, were left with no other option but to file this action.

8 43. On information and belief, Plaintiffs will be able to determine the unknown
9 Defendants' identities through discovery, as Instagram's privacy policy states that Instagram
10 collects and retains identifying information on each user. If expedited discovery is granted by
11 the Court, Plaintiffs will be able to quickly use such information from the Instagram service to
12 identify and contact Defendants.

COUNT I

(Trademark Infringement under
the Lanham Act, 15 U.S.C. § 1114(a))

15 44. Plaintiffs incorporate the allegations in paragraphs 1-43 as though fully set forth
16 herein.

17 45. The Defendants have adopted and used the MGM Mark and the VDARA Mark in
18 U.S. commerce by virtue of their use of the marks as their Instagram usernames.

19 46. The Defendants' unauthorized use of the MGM and VDARA marks constitutes a
20 reproduction, copying, counterfeiting, and colorable imitation of the MGM and VDARA marks
21 in a manner that is likely to cause confusion or mistake or is likely to deceive consumers.

22 47. The Defendants' unauthorized use of the MGM and VDARA marks is likely to
23 cause initial interest confusion by diverting Internet users away from Instagram accounts
24 controlled by Plaintiffs to Instagram accounts controlled by Defendants. Indeed such confusion
25 has already occurred.

26 48. As a direct and proximate result of Defendants' infringement, Plaintiffs have
27 suffered, and will continue to suffer, monetary loss and irreparable injury to their businesses,
28 reputations, and goodwill.

1 49. Accordingly, Defendants' use of the Infringing Usernames constitutes
2 infringement of Plaintiffs' registered trademarks, in violation of the Lanham Act, 15 U.S.C.
3 § 1114.

4 50. Defendants' acts of infringement, unless enjoined by this Court, will continue to
5 cause Plaintiffs to sustain irreparable damage, loss, and injury, for which Plaintiffs have no
6 adequate remedy at law.

COUNT II

(False Designation of Origin under
the Lanham Act, 15 U.S.C. § 1125(a)(1)(A))

9 51. Plaintiffs incorporate the allegations in paragraphs 1-50 as though fully set forth
10 herein.

11 52. The Defendants' use of the MGM and VDARA marks is likely to cause
12 confusion, cause mistake, and/or deceive as to an affiliation, connection, or association between
13 Plaintiffs and Defendants, or as to the origin, sponsorship, or approval of Defendants' activities
14 by Plaintiffs. Indeed, such confusion has already occurred.

15 53. As a direct and proximate result of Defendants' false designation of origin,
16 Plaintiffs have suffered, and will continue to suffer, monetary loss and irreparable injury to their
17 businesses, reputations, and goodwill.

18 54. Accordingly, Defendants' activities constitute an infringement of the MGM and
19 VDARA marks, and unfair competition, in violation of 15 U.S.C. § 1125(a)(1)(A).

20 55. Defendants' acts of infringement and unfair competition, unless enjoined by this
21 Court, will continue to cause Plaintiffs to sustain irreparable damage, loss, and injury, for which
22 Plaintiffs have no adequate remedy at law

COUNT III

(Trademark Dilution under the Lanham Act, 15 U.S.C. § 1125(c))

26 56. Plaintiffs incorporate the allegations in paragraphs 1-55 as though fully set forth
27 herein.

28 | //

1 57. The MGM Mark is famous within the meaning of the Federal Trademark Dilution
2 Act.

3 58. Unknown Defendant Doe 1 adopted and begun using the MGM Mark in U.S.
4 commerce by virtue of its use as an Instagram username, and the distribution of images and
5 comments in connection with such username.

6 59. Defendant Doe 1's use of the MGM Mark has, at all times, been willful,
7 deliberate, and intentional. The use of the MGM Mark was designed to usurp and wrongfully
8 trade off of the substantial investment and goodwill MGM Grand has developed in its MGM
9 Mark.

10 60. Defendant Doe 1's adoption and use of the MGM Mark began well after the
11 MGM Mark became famous.

12 61. Defendant Doe 1's unauthorized adoption and use of a mark that is identical to or
13 confusingly similar to the MGM Mark is likely to dilute the distinctiveness of the MGM Mark
14 within the meaning of the Federal Trademark Dilution Act.

15 62. As a direct and proximate result of Defendant Doe 1's conduct, Plaintiff MGM
16 Grand has suffered, and will continue to suffer, monetary loss and irreparable injury to its
17 business, reputation, and goodwill.

COUNT IV
(Common Law Trademark Infringement)

20 63. Plaintiffs incorporate the allegations in paragraphs 1-62 as though fully set forth
21 herein.

22 64. Plaintiffs have been using the MGM Mark in commerce since at least as early as
23 1973. Plaintiffs have been using the VDARA Mark in commerce since at least as early as 2009.
24 Plaintiffs' use of the MGM Mark in commerce predates Defendants' use of the MGM Mark by
25 several decades, while Plaintiffs' use of the VDARA Mark in commerce predates Defendants'
26 use of the VDARA Mark by several years.

27 65. Plaintiffs have spent millions of dollars advertising, marketing, and promoting
28 its goods and services under the MGM and VDARA marks.

1 66. As a result, Plaintiffs have developed substantial goodwill, fame, and recognition
2 in the MGM and VDARA marks, and consumers associate the MGM and VDARA marks
3 exclusively with Plaintiffs.

4 67. The Defendants' use of the MGM and VDARA marks is likely to cause
5 confusion, cause mistake, and/or deceive as to an affiliation, connection, or association between
6 Plaintiffs and Defendants, or as to the origin, sponsorship, or approval of Defendants' activities
7 by Plaintiffs. Indeed, such confusion has already occurred.

8 68. As a direct and proximate result of Defendants' false designation of origin,
9 Plaintiffs have suffered, and will continue to suffer, monetary loss and irreparable injury to their
10 businesses, reputations, and goodwill.

11 69. Accordingly, Defendants' activities constitute an infringement of the MGM and
12 VDARA marks under the common law.

13 70. Defendants' acts of infringement and unfair competition, unless enjoined by this
14 Court, will continue to cause Plaintiffs to sustain irreparable damage, loss, and injury, for which
15 Plaintiffs have no adequate remedy at law.

COUNT IV
(Cybersquatting under 15 U.S.C. § 1125(d))

18 71. Plaintiffs incorporate the allegations in paragraphs 1-70 as though fully set forth
19 herein.

20 72. Unknown Defendants Doe 1 and Doe 2 registered the Instagram usernames
21 MGM and VDARA, respectfully, through the Instagram service. Such usernames include the
22 addresses “www.instagram.com/mgm” and “www.instagram.com/vdara”, which are
23 alphanumeric designations for electronic addresses on the Internet, and therefore constitute
24 “domain names” under 15 U.S.C. § 1127.

25 73. On information and belief, Defendants had a bad faith intent to profit from their
26 use of the MGM and VDARA marks through the registration of said domain names.

27 74. Defendants' Infringing Usernames are identical to Plaintiff's MGM and
28 VDARA marks, and the Defendants' domain names are confusingly similar to Plaintiffs' MGM

1 || and VDARA marks.

2 75. Accordingly, Defendants' activities constitute cyberpiracy under 15 U.S.C.
3 § 1125(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court grant the following relief:

6 A. An order granting Plaintiffs leave to serve subpoenas upon Instagram and its
7 parent company Facebook, Inc., for the purpose of identifying the presently unknown controllers
8 of the Instagram usernames MGM and VDARA.

9 B. A temporary, preliminary, and permanent injunction prohibiting the Defendants
10 and their respective officers, agents, servants, employees, and/or all other persons acting in
11 concert or participation with Defendants, from: (1) using the MGM Mark, or any confusingly
12 similar variations thereof, alone or in combination with any other letters, words, letter string,
13 phrases or designs in commerce, including, without limitation, as an Instagram username, as a
14 Twitter or other social network username, on any website, in any domain name, in any hidden
15 website text, or in any website metatag; and (2) engaging in false or misleading advertising or
16 commercial activities likely to deceive consumers into believing that any Defendant is affiliated
17 with, connected to, approved by, or sponsored by Plaintiffs;

18 C. A temporary, preliminary, and permanent injunction prohibiting the Defendants
19 and their respective officers, agents, servants, employees, and/or all other persons acting in
20 concert or participation with Defendants, from: (1) using the VDARA Mark, or any confusingly
21 similar variations thereof, alone or in combination with any other letters, words, letter string,
22 phrases or designs in commerce, including, without limitation, as an Instagram username, as a
23 Twitter or other social network username, on any website, in any domain name, in any hidden
24 website text, or in any website metatag; and (2) engaging in false or misleading advertising or
25 commercial activities likely to deceive consumers into believing that any Defendant is affiliated
26 with, connected to, approved by, or sponsored by Plaintiffs;

27 D. An award of compensatory, and/or consequential damages to Plaintiffs in an
28 amount to be determined at trial:

E. An award of interest, costs, and attorneys' fees incurred by Plaintiffs in prosecuting this action; and

3 F. All other relief to which Plaintiff is entitled.

4 DATED: August 21, 2014.

Respectfully submitted,

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